

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

(1) S. B. CIVIL MISC. APPEAL NO. 1043/2006

UNITED INDIA INSURANCE CO. LTD.

v

PAWAN TIKKIWAL & OTHERS

(2) S.B. CIVIL MISC. APPEAL NO. 1044/2006

UNITED INDIA INSURANCE CO. LTD.

v

SMT. LAJWANTI & OTHERS

DATE OF JUDGMENT:

13th APRIL, 2007.

Hon'ble Mr. Justice R. S. Chauhan

Mr. Ashok Mehta for the appellants.

Mr. Ram Singh Rathore for the respondents.

By Court:

REPORTABLE

While descending from the hill top Jain Temple, popularly known as “Chulgiri”, the father, Yogesh Kumar (' the deceased' for short) and his son, Pawan Kumar Tikkiwal ('respondent No.1' for short) met with an accident when their scooter slipped due to the rough and bumpy road. Because of the injuries sustained by Yogesh Kumar, he expired on 14.9.2000; Pawan Kumar Tikkiwal, respondent No.1, became paralysed from waist below. Immediately, after the said accident, the relatives of respondent No.1

and the deceased who had gathered at the base of the hill, took the respondent No.1 and his father to the S.M.S. Hospital. Four days later, on 14.9.2000, one Ganesh Tikkiwal, the brother-in-law of the deceased, lodged a First Information Report (FIR for short) at Police Station Transport Nagar, Jaipur. On the basis of the report a FIR for offences under Sections 279, 337 and 304A of the I.P.C. was registered. According to the FIR the deceased and the respondent No.1 were descending from the temple on the top of the hill to the Temple at the bottom of the hill known as 'Chulgiri', their scooter, bearing Registration No. RNP 2904, was being driven by the deceased and the respondent No.1 was the pillion rider. While riding, the scooter had skidded and the injuries were caused. According to the complainant, although he was not an eye-witness of the accident, but he had gathered the said information from his wife Laxmi Devi and his son Deepak, who were coming down from the hill just behind the deceased and respondent No.1. Since the respondent No.1 was unconscious for few days, his statement under Section 161 of the Cr.P.C. (the Code for short) could not be recorded immediately, but were eventually recorded on 26.9.2000. According to his statement (henceforth to be referred to as 'the first statement'), the respondent no.1 clearly stated that the accident had occurred because the scooter had slipped on the rough road. The said statement is marked as Ex. NA-4. The statement of Smt. Laxmi Devi

was recorded on 30.9.2000 where she also corroborated the contents of the FIR and the statement of respondent No.1. Likewise, Deepak Tikkiwal, the cousin brother of respondent No.1, his statement was also recorded on 30.9.2000 wherein he also repeated the contents of the FIR. During the course of investigation, the police also prepared a site plan which merely showed that the scooter had skidded. The said site plan was prepared in the presence of Ganesh Tikkiwal. Thus, according to the initial version of the case, the accident had occurred only because the scooter had slipped on the rough road. After due investigation in the FIR, the police had filed the final report on 26.10.2000 and the case was closed.

However, after a lapse of six months, the entire case was changed. The respondent No.1 wrote to the Superintendent of Police on 27.3.2001 wherein for the first time he alleged that on 14.9.2000, his father and he was descending from 'Chulgiri' they were hit by a jeep, bearing Registration No. RJ 14 – 2C – 5431. The said jeep was being driven by its driver in a most rash and negligent manner. The said jeep came on the wrong side of the road and hit the scooter. Consequently, his father fell from the scooter and became unconscious. He also suffered injuries and became unconscious. He does not know who brought him to the hospital. On 14.9.2000 during recovery, his father expired. He further claimed that after he

regained consciousness, he informed his under (Fufa) about the accident of the jeep. However, despite the said information to the police, the police has not investigated the case properly. Therefore, he requested for re-investigation of the case. Upon this application, the supplementary statements of respondent No.1., Ganesh Tikkiwal, Laxmi Devi, Deepak Tikkiwal and other witnesses were recorded. Eventually, the police filed a challan against Ramswaroop Sukhija, the owner of the jeep and against Kuldeep Joshi, driver of the jeep, respondents Nos. 2 and 3 respectively before this Court. Thus, clearly an innocuous accident was transformed into a deadly accident between the jeep and the scooter within a period of six months.

Two separate claim petitions were filed before the Motor Accident Claims Tribunal, Jaipur, one by respondent No.1 for the injuries sustained by him in the accident; the other, by the dependents of the deceased Yogesh Kumar. In order to substantiate their case, the respondent No.1 and the other claimants had examined four witnesses and had submitted 144 documents. The Insurance Company had examined three witnesses and had submitted thirteen documents. After going through the oral and documentary evidence vide its common award dated 18th January, 2006, the learned Tribunal granted a compensation of Rs. 10,27,305/- to the respondent No.1 for the injuries suffered by him alongwith 6% interest per annum with effect from 23.11.2001. The learned Tribunal

also awarded a compensation of Rs. 6,59,380/- to the dependents of the deceased alongwith 6% interest per annum with effect from 23.11.2001. Since the Insurance Company is aggrieved by the said award, it has filed two separate appeals before t his Court. Since the factual matrix and the impugned award are common to both the appeals, both the appeals are being decided by this common judgment.

Mr. Ashok Mehta, learned counsel for the appellant – Insurance Company has argued that civil cases have to be decided on the basis of the probability. Civil cases are not required to be proved beyond a reasonable doubt. Secondly, there is a vast difference between the initial version given by Ganesh Tikkiwal and stated by respondent No.1 and the subsequent version stated by the respondent No.1 and his witnesses. Although this difference was pointed out to the learned Tribunal, the learned Tribunal did not scrutinise the evidence in its proper perspective. Thirdly, the claim has been supported by interested witnesses who have changed their stand from the initial statement given to the police under Section 161 of the Code. Despite the change in their stand, the learned Tribunal has taken them to be trustworthy witnesses. But from the fact that they have changed their stand dramatically, they are unreliable witnesses. Fourthly, that material witnesses like Ganesh Tikkiwal, his son Deepak and his wife Laxmi Devi have not been produced in

the witness-box. Lastly, that a false case has been fabricated by the claimants and without appreciating the evidence in its proper perspective a huge compensation amount has been directed to be paid.

On the other hand, Mr. Ram Singh Rathore, the learned counsel for the respondents has vehemently argued that Ganesh Tikkiwal, the complainant, was not an eye-witness. He had merely lodged the FIR on the basis of hearsay. It is only when respondent No.1 regained his conscious, that the true facts about the accident came to light. Although the true facts were brought to the notice of the police, the police did not investigated the case properly. Therefore, on 27.3.2001 the respondent No.1 sent a complaint to the Superintendent of Police. Thereafter, the statement of the witnesses was recorded and a challan was filed by the police against the driver and the owner. Moreover, an eye-witness like Bhanwar Lal Gupta has been produced in the witness-box, who has corroborated the statement of respondent NO.1 with regard to the accident between the jeep and the scooter. The statement of respondent No.1 and of Bhanwar Lal Gupta are further corroborated by medical evidence. Therefore, he has supported the impugned award.

We have heard both the learned counsels and have perused the impugned award and have examined the record

produced by the parties before this Court.

One of the settled principle of the law of evidence is that the first version of an incident contains the kernel of truth. For, it is the tendency of human beings to speak the truth immediately. Subsequently, after due deliberations, the facts can be changed, the story can be embroidered and a fictional version can be created. Thus, while appreciating the evidence, the courts consider the initial statement as containing the substratum of truth. In case there is a change in the factual foundation of the case, the court should be put on alert and should scrutinise the evidence meticulously so as to separate the wheat from the sheff.

The first version that was stated to the police not only by the complainant but also by the respondent No.1 - the injured - was that while descending from the hill top temple at 'Chulgiri', the scooter driven by the deceased skidded because of the rough road and uneven pot holes on the road. This is apparent from the statement of respondent No.1 recorded on 26.9.2000. According to the said statement of respondent No.1 dated 26.9.2000 (NA-4), the respondent tells us that "on 10.9.2000 there was a 'Goth' of the community. He and his family members were returning from top of the hill around 5.30 in the evening. His father was driving the scooter and he was sitting behind him. The road was uneven and in places

there were pot holes on the road. Suddenly, the scooter skidded and my father fell on the road. Both of us suffered injuries and both became unconscious.” He further claim that “he does not know as to who brought him to the hospital. But he regained his consciousness in the hospital and since then he is recovering in Ward No. NW-1. His father was admitted in Ward No. NSW-1. But he has expired on 14.9.2000.” He further admits that “this accident occurred because the scooter skidded suddenly.” He further claims that ”because of the said accident, his spinal cord has been damaged and he has suffered other injuries.”

Smt. Laxmi Devi in her statement under Section 161 of the Code which was recorded on 30.9.2000 also states that “on 10.9.2000 a 'Goth' of the community was organised. Around 5.30 p.m., she and her son Deepak were descending from the hill top. On the way they noticed that Yogesh Tikkiwal and Pawan Tikkiwal were lying unconscious and the scooter was lying on the side of the road. They immediately stopped a Maruti Car and admitted them at the S.M.S. Hospital.” She further states that “this accident has occurred because the scooter has slipped. The scooter was being driven by Yogesh Tikkiwal.” Deepak Tikkiwal gave a similar statement. A perusal of these statements recorded under Section 161 of the Code clearly reveal that according to these witnesses the accident occurred because the scooter slipped. Moreover, according to them

Bhanwar Lal Gupta was not present at the time of the incident. None of these witnesses even claim that Bhanwar Lal Gupta was present in the gathering at the 'Goth'. Thus, the statement of respondent No.1 and of Laxmi Devi and Deepak and of Ganesh Tikkiwal, the complainant are consistent that the accident had occurred because the scooter had slipped.

However, subsequently the respondent No.1 changes his stand and claims that the scooter was hit by a jeep bearing Registration No. RJ 14 0 2C – 5431, which was being driven negligently and rashly by respondent No.3. He also introduces Bhanwar Lal Gupta as an eye-witness. But surprisingly he does not produce Smt. Laxmi Devi or Deepak Tikkiwal as a witness. Thus the claimant have withheld important witnesses. Since important witnesses have not been produced, adverse inference should have been drawn. Despite the sudden change in the story, the learned Tribunal has not scrutinised the evidence meticulously. Instead the learned Tribunal has accepted the version of the claimants and their witness as the gospel truth. Interestingly, the respondent No.2 in his cross-examination was confronted with his statement given to the police on 26.9.2000. But, he merely denies having given such a statement. He was also confronted by the Bed Head Ticket wherein it was mentioned that the accident had occurred because his scooter

had skidded. Despite the clear contradictions in the stand taken by the respondent No.1 and the other witnesses, the learned Tribunal has failed to separate the wheat from the sheff. Therefore, there is force in the argument of the appellant Insurance Company that the claimants have concocted a false story about a vehicular accident.

It is unfortunate that an innocent accident caused by the skidding of the scooter has been converted into a ghastly accident between the scooter and a jeep. Although it is extremely unfortunate that the respondent No.1 has lost his father in the accident and the respondent No.1 has become paralysed from the waist below, but judicial decision cannot be influenced by the sympathetic considerations. The evidence should be appreciated objectively. In a civil case, the pros and cons, the probability of the case has to be appreciated in an impartial manner.

Once the inconsistencies in the stand of the respondent No.1 and his witnesses have been pointed above, the court finds it difficult to accept the contention of the learned counsel for the respondents that the respondents and his witnesses have stated consistent and truthful version before the learned Tribunal. Therefore, this court has no hesitation in concluding that the respondent No.1 had fabricated a false case of an accident between the jeep and the scooter. Therefore, the learned Tribunal was not

justified in granting the compensation to the respondent No.1 and to the other claimants.

In the result, these appeals are allowed and the award dated 18.1.2006 is quashed and set aside. There shall be no order as to costs.

(R.S. CHAUHAN) J.

MRG.